

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Laborers Pension Trust Fund -
Detroit and Vicinity, et al.,

Plaintiffs,

v.

USA Plumbing and Sewer Service,
Inc.,

Defendant.

Case No. 23-10437

Judith E. Levy
United States District Judge

Mag. Judge Elizabeth A.
Stafford

**ORDER GRANTING PLAINTIFFS' EX PARTE MOTION [10],
ORDERING AN EXAMINATION OF JUDGMENT DEBTOR, AND
RESTRAINING TRANSFER OF CERTAIN PROPERTY
SUPPLEMENTARY TO JUDGMENT**

Before the Court is Plaintiffs' ex parte motion for examination of judgment debtor and restraining transfer of certain property supplementary to judgment. (ECF No. 10.) For the reasons set forth below, Plaintiffs' motion is granted.

Federal Rule of Civil Procedure 69(a) provides: "In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person—including the judgment debtor—as provided in these

rules or by the procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(2). Under Michigan law, a court may “[c]ompel a discovery of any property or things in action belonging to a judgment debtor, and of any property, money, or things in action due to him, or held in trust for him.” Mich. Comp. Laws § 600.6104(1). To facilitate an examination of the judgment debtor, the statute also provides:

(1) Upon an affidavit, showing to the satisfaction of the judge that any person has money or property of the judgment debtor, or is indebted to him, the judge may issue a subpoena requiring the judgment debtor or the person or both to appear at a specified time and place, and be examined on oath, and to produce for examination any books, papers, or records in his or its possession or control which have or may contain information concerning the property or income of the debtor.

Id. § 600.6110(1). “A corporation shall attend by and answer under the oath of an officer thereof, and the judge may, in his discretion, specify the officer.” *Id.* § 600.6110(2).

Here, Plaintiffs obtained a judgment by default against Defendant USA Plumbing and Sewer Service, Inc. on April 21, 2023 in the amount of \$42,995.08 plus interest. (ECF No. 7.) In his affidavit attached to the motion, Plaintiffs’ counsel Craig E. Zucker indicates that Defendant was served with the judgment on April 25, 2023 but has failed to pay the judgment voluntarily. (ECF No. 10, PageID.32; *see also* ECF No. 9.) The

motion also indicates that Plaintiffs' counsel has made several attempts to communicate with Kimberly Ann Slating Flynn, an officer and director of Defendant, and Michael Scott, "an active representative and potential owner/operator of Defendant," regarding the judgment but the judgment remains unresolved. (*See* ECF No. 10, PageID.25–26.) As such, the Court finds that a judgment debtor examination of Defendant is warranted.

Michigan law also permits a court to "[p]revent the transfer of any property, money, or things in action, or the payment or delivery thereof to the judgment debtor." Mich. Comp. Laws § 600.6104(2).

An order for examination of a judgment debtor may contain a provision restraining the judgment debtor from making or suffering any transfer or other disposition of, or interference with any of his property then held or thereafter acquired by or becoming due to him not exempt by law from application to the satisfaction of the judgment, until further direction in the premises, and such other provisions as the court may deem proper.

Id. § 600.6116(1).

Here, Mr. Zucker indicates in his affidavit that he has concerns that "Defendant will place property beyond the reach of this court unless restrained from doing so by order of this court." (ECF No. 10, PageID.32.) And as noted above, Defendant has refused to pay the judgment voluntarily (*See id.* at PageID.25–26, 32.) As such, the Court finds that

an award restraining any transfers of property by Defendant is also warranted at this time.

Accordingly, Plaintiffs' ex parte motion for examination of judgment debtor and restraining transfer of certain property supplementary to judgment (ECF No. 10) is GRANTED.

Plaintiffs are authorized to issue a subpoena to Defendant USA Plumbing and Sewer Service, Inc., whose registered address is 11731 29 Mile Rd., Washington, Michigan 48095. Kimberly Ann Slating Flynn ("Deponent") shall appear for and on behalf of Defendant. Deponent shall appear for a judgment debtor examination on **Wednesday, June 21, 2023 at 10:30 a.m.** The judgment debtor examination will be held at the law offices of Maddin Hauser Roth & Heller, PC, 28400 Northwestern Hwy., 2nd Floor, Southfield, Michigan 48034 before an officer duly authorized to administer oaths, and be stenographically recorded and conducted in accordance with the Federal Rules of Civil Procedure. Deponent will be examined under oath concerning the income, property, or other means of satisfying the default judgment entered herein against Defendant on April 21, 2023. (ECF No. 7.)

Deponent must bring with her to the judgment debtor examination the following books, records, and papers in her possession, custody or control as they relate to Defendant USA Plumbing and Sewer Service, Inc.:

1. All checkbooks, check registers, check stubs, canceled checks, bank statements and other documents whatsoever relating to any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, in which Defendant has, or has had, any interest, at any time during the two (2) years immediately preceding the date hereof;
2. Copies of all returns, schedules and forms filed by or on behalf of Defendant with the Internal Revenue Service, State of Michigan, and any municipal governments, relating to any income received, property owned, business activities, sale or intangibles tax, of Defendant at any time during the two (2) years immediately preceding the date hereof;
3. All books of account and accounts receivable ledgers;
4. List of assets and liabilities;

5. All contracts of purchase, sale, bills of sale, certificates of title and deeds, and all other evidence of title or instruments of whatsoever kind or nature, relating to the purchase, sale or ownership of any property, real or personal, or any interest therein, purchased, sold or owned by, or on behalf of, Defendant at any and all times during the five (5) years immediately preceding the date hereof; and
6. Copies of all profit and loss statements and balance sheets relating to the affairs of Defendant prepared by, or on behalf of, said Defendant at any time during the two (2) years immediately preceding the date hereof.

Defendant USA Plumbing and Sewer Service, Inc.; any officers, directors, employees and agents of Defendant; and any third party who is served with a true and entered copy of this Order, are RESTRAINED from transferring or disposing of any property of Defendant, whether now owned, or hereafter acquired by, or becoming due to Defendant, until further order of this Court. This order does not apply to property exempt by law from application to the satisfaction of the judgment.

Plaintiffs must personally serve Defendant with a copy of this order on or before **Wednesday, June 14, 2023**.

IT IS SO ORDERED.

Dated: June 7, 2023
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 7, 2023.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager